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| 10/735,558  | 12/12/2003  | Aseem Agrawal        | JP920030181US1      | 3924             |
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| 01/27/2009  |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| PRESTON, JOHN O   |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/735,558

**Applicant(s)**

AGRAWAL, ASEEM

**Examiner**

JOHN O. PRESTON

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 7, 14, 20, 27 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 7, 14, 20, 27 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1, 7, 14, 20, 27, and 31 are presented for examination. Applicant filed an amendment on August 28, 2008. Claims 2-6, 8-13, 15-19, 21-26, 28-30, and 32-35 have been canceled. Claims 1, 7, 14, 20, 27, and 31 have been amended. Since the new grounds of rejection were necessitated by applicant's amendment of the claim(s), the rejection of claims 1, 7, 14, 20, 27, and 31 is a final rejection of the claim(s).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1, 7, 20, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff (US 2002/0013782 A1) in view of Asplen (6,044,354), in view of Miller (US

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2003/0216955), in view of Harshaw (US 2001/0010041 A1), and further in view of Stewart (US 2002/0152110 A1).

Claim 1: In regard to the following limitation, Ostroff suggests:

- obtaining, from competitors' websites, competitors' data relating to competitors' products similar to said proposed new product: wherein said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; (See at least Ostroff: page 2, paragraphs 22-26.)
- processing said competitors' data wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data: (See at least Ostroff: page 3, paragraph 39)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- inputting merchant's data relating to a proposed new product: wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element

merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; and (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- outputting at least one marketing mix for said proposed new product based on a result of said online market research and completed conjoint data analysis, said at least one marketing mix comprising any of a product configuration, a product position, and a price for said proposed new product. (See at least Miller: page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each

element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

Claim 7:

In regard to the following limitation, Ostroff suggests:

- periodically obtaining competitors' data, from competitors' websites, relating to said competitors' products that are similar to

said one or more of said merchant's existing products, wherein said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; detecting a change in the product and positioning attributes from said shortlist relating to at least one competitors' product that is similar to said one or more of said merchant's existing products; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63)

- processing said competitors' data wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data: (See at least Ostroff: page 3, paragraph 39)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- inputting merchant's data relating to one or more of a merchant's existing products wherein said merchant's data comprises product attributes and positioning attributes of each of said existing products, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and pricing; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element



merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- outputting said one or more of said merchant's existing products that require repositioning and/or repricing based on the detected change, a result of said online market research, and completed conjoint data analysis. (See at least Miller: Figs. 3-9; page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did

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separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

Claim 20:

In regard to the following limitation, Ostroff suggests:

- periodically obtaining competitors' data, from competitors' websites, relating to said competitors' products that are similar to said one or more of said merchant's existing products, wherein

said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; detecting a change in the product and positioning attributes from said shortlist relating to at least one competitors' product that is similar to said one or more of said merchant's existing products; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63.)

- processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, (See at least Ostroff: page 3, paragraph 39.)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- inputting merchant's data relating to one or more of a merchant's existing products, wherein said merchant's data comprises product attributes and positioning attributes of each of said existing products, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and pricing; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- outputting said one or more of said merchant's existing products that require repositioning and/or repricing based on the detected change, a result of said online market research, and completed conjoint data analysis. (See at least Miller: Figs. 3-9; page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did

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separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

Claim 31:

In regard to the following limitation, Ostroff suggests:

- a processor configured to: periodically obtain competitors' data, from competitors' websites, relating to said competitors' products that are similar to said one or more of said merchant's existing

products, wherein said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; detect a change in the product and positioning attributes from said shortlist relating to at least one competitor's product that is similar to said one or more of said merchant's existing products; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63)

- process said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data, (See at least Ostroff: page 3, paragraph 39)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- a memory that stores an inputted merchant's data relating to one or more of a merchant's existing products, wherein said merchant's data comprises product attributes and positioning attributes of each of said existing products, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and pricing; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element

merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- output said one or more of said merchant's existing products that require repositioning and/or repricing based on the detected change, a result of said online market research, and completed conjoint data analysis. (See at least Miller: Figs. 3-9; page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did

separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

4. Claims 14 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff in view of Asplen, in view of Miller, in view of Harshaw, in view of Stewart, and further in view of Kotler & Armstrong (Prentice Hall).

Claim 14: In regard to the following limitation, Ostroff suggests:



- obtaining, from competitors' websites, competitors' data relating to competitors' products similar to said proposed new product, wherein said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63)
- processing said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identifying a shortlist of product attributes and positioning attributes based on the filtered competitors' data, (See at least Ostroff: page 3, paragraph 39.)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- inputting merchant's data relating to a proposed new product, wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a

combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)
- outputting at least one marketing mix for said proposed new product based on a result of said online market research and completed conjoint data analysis, (See at least Miller: Figs. 3-9; page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did

separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw/Stewart does not teach the remaining limitation. However, Kotler & Armstrong suggests:

- said at least one marketing mix comprising any of a product configuration, a product position, and a price for said proposed new product. (Kotler & Armstrong: p. 49)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Kotler & Armstrong because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

Claim 27: In regard to the following limitation, Ostroff suggests:

- a processor configured to: obtain, from competitors' websites, competitors' data relating to competitors' products similar to said proposed new product, wherein said competitor's data comprises product attribute name-value pairs, positioning attribute name-value pairs, and pricing associated with each of said competitors' products, said pricing further comprising any of list price, discounts, and credit terms; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63)
- process said competitors' data, wherein said processing comprises filtering said competitors' data according to merchant selected value ranges for said product and positioning attributes; identify a shortlist of product attributes and positioning attributes based on the filtered competitors' data, (See at least Ostroff: page 3, paragraph 39)

Ostroff does not teach the remaining limitations. However, Asplen suggests:

- a memory that stores an inputted merchant's data relating to a proposed new product, wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; (See at least Asplen: col. 2, lines 45-60)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff with the elements as taught by Asplen because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen does not teach the remaining limitations. However, Miller suggests:

- wherein each of said competitors' products is mapped to said shortlist of product attributes and positioning attributes, (See at least Miller: Fig. 4)
- wherein holes are identified in a map of said short list of product attributes, where no said competitors' products exist, (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)
- wherein each of said holes is classified as attractive or unattractive, (Miller: Figs. 3-5; pg. 4, pgh 49)
- wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of

clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59)

- output at least one marketing mix for said proposed new product based on a result of said online market research and completed conjoint data analysis, (See at least Miller: Figs. 3-9; page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen with the elements as taught by Miller because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller does not teach the remaining limitations. However, Harshaw suggests:

- conduct conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller with the elements as taught by Harshaw because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw does not teach the remaining limitation. However, Stewart suggests:

- conduct online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis; (See at least Stewart: page 4, paragraph 54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Stewart because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately. Ostroff/Asplen/Miller/Harshaw/Stewart does not teach the remaining limitation. However, Kotler & Armstrong suggests:

- said at least one marketing mix comprising any of a product configuration, a product position, and a price for said proposed new product. (Kotler & Armstrong: p. 49)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the elements cited in Ostroff/Asplen/Miller/Harshaw with the elements as taught by Kotler & Armstrong because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately.

#### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event of a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE MONTH shortened statutory period, then the shortened

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statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **John Preston** whose telephone number is **571.270.3918**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **ALEXANDER KALINOWSKI** can be reached at **571.272.6771**.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

P.O. Box 1450

Alexandria, VA 22313-1450

or faxed to 571-273-8300

Hand delivered responses should be brought to:

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Examiner, Art Unit 3691  
January 12, 2009

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Supervisory Patent Examiner, Art Unit 3691